

BEFORE THE FEDERAL ELECTION COMMISSION

American Democracy Legal Fund  
455 Massachusetts Avenue, NW  
Washington, DC 20001

Complainant,

v.

Allen Lucas Messer  
c/o Luke Messer for Congress  
P.O. Box 917  
Shelbyville, IN 46176

MUR # 7263

Respondent.

OFFICE OF GENERAL

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FEDERAL ELECTION  
COMMISSION

COMPLAINT

This complaint is filed under 52 U.S.C. § 30109(a)(1) against Congressman Allen Lucas “Luke” Messer (“Rep. Messer”) for violating the Federal Election Campaign Act of 1971, as amended (the “Act”) and Federal Election Commission (“FEC” or “Commission”) regulations. Based on his public statements, Rep. Messer has moved beyond “testing the waters” for a possible run for United States Senate to become a “candidate” under the Act and violated the candidate registration and reporting requirements of the Act, 52 U.S.C. § 30101, *et seq.*, and Commission regulations.

1. **FACTUAL BACKGROUND**

On April 9, 2017 in a campaign press release, Rep. Messer announced new members to his approximately 50-member Statewide Campaign Finance Committee, which is led by its chair Greg Pence, the brother of the Vice President of the United States and widely expected to run for

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the congressional seat that Rep. Messer will vacate in order to run for U.S. Senate.<sup>1</sup> Also in the press release issued by Rep. Messer was a list of “Individuals Supporting Congressman Rep. Messer for the United States Senate,” which includes prominent Indiana business, community and political leaders.”<sup>2</sup> Rep. Messer’s Deputy Campaign Manager stated “ ‘we look forward to welcoming additional members to the team who are committed to supporting Congressman Luke Messer for the *United States Senate.*’ ”<sup>3</sup> Greg Pence further noted “2018 will be an important election for our state and our country. That’s why I am thrilled to chair this team of Hoosier leaders who are united in their support for Luke. Together, we’ll elect a thoughtful conservative who reflects the heart of Hoosier working families.”<sup>4</sup> Note that Greg Pence did not say “re-elect” Rep. Messer to United States Congress, but used the word “elect”, which indicates election to a new office. Nor did Greg Pence make his language conditional on any decision that has yet to be made.

Furthermore, Rep. Messer has been amassing a large amount of funds in recent months. Rep. Messer’s campaign recently announced that it has raised more than \$700,000 in contributions during the first quarter of this year and has more than \$1.6 million in cash on hand.<sup>5</sup> Rep. Messer’s campaign finance director stated that “ ‘[t]he support Congressman Messer has received across the state so early in the cycle is remarkable.’ ”<sup>6</sup> Rep. Messer “would have no need for the [Statewide Campaign Finance Committee] – or touting his first-quarter

<sup>1</sup> “Congressman Messer Announces Statewide Campaign Finance Committee,” City-County Observer, Apr. 9, 2017, <http://city-countyobserver.com/congressman-messer-announces-statewide-campaign-finance-committee/>; see also Tony Cook & Kaitlin Lange, “Is the VP’s Brother Looking to Throw his Hat into the Political Ring?”, USA Today, June 8, 2017, <https://www.usatoday.com/story/news/politics/onpolitics/2017/06/08/pences-brother-looks-at-political-run/102624906/>.

<sup>2</sup> “Congressman Messer Announces Statewide Campaign Finance Committee,” City-County Observer, Apr. 9, 2017, <http://city-countyobserver.com/congressman-messer-announces-statewide-campaign-finance-committee/>.

<sup>3</sup> *Id.* (emphasis added).

<sup>4</sup> *Id.*

<sup>5</sup> Brian Francisco, “Messer Campaign Touts Fundraising Total”, The Journal Gazette, Apr. 6, 2017, <http://www.journalgazette.net/2017/04/06/messer-campaign-touts-fundraising-total>.

<sup>6</sup> *Id.*

fundraising total – if he planned to run for re-election in his safe congressional district in east-central and southeastern Indiana.”<sup>7</sup>

## II. LEGAL ANALYSIS

Individually and taken together, the facts allow for no reasonable conclusion other than Rep. Messer being a candidate for the United States Senate. The term “candidate” is defined in the Act to mean “an individual who seeks nomination for election, or election to Federal office” and for purposes of the statutory definition, an individual is deemed to seek nomination for election, or election, “if such individual has received contributions aggregating in excess of \$5,000.”<sup>8</sup> Although an individual may raise or spend more than \$5000 on “testing-the-waters” activity without becoming a candidate, the testing-the-waters exemption does not apply “to individuals who have decided to become candidate.”<sup>9</sup>

The Commission has explained that the testing-the water regulation distinguishes “activities directed to an evaluation of the feasibility of one’s candidacy . . . from conduct signifying that a private decision to become a candidate has been made.”<sup>10</sup> The Commission’s regulations offer five examples of activities that indicate that an individual has decided to become a candidate, and Rep. Messer easily satisfies three of the five: “(1) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office. (2) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate. (3) The individual makes or authorizes written or

<sup>7</sup> *Id.*

<sup>8</sup> 52 U.S.C. § 30101(2)(A); 11 C.F.R. § 100.3(a).

<sup>9</sup> 11 C.F.R. §§ 100.72(b), 100.131(b).

<sup>10</sup> Adv. Op. 2015-09 (Senate Majority PAC & House Majority PAC) at 5 (citing Adv. Op. 1981-32 (Askew) at 4).

oral statements that refer to him or her as a candidate for a particular office.”<sup>11</sup>

By issuing a press release to tout individuals supporting his run for Senate and to announce members of a sizable Statewide Campaign Finance Committee, the very existence of which indicates a run for Senate, Rep. Messer used general public advertising to support his Senate candidacy. Additionally, his current fundraising amounts would be outsized i for exploratory purposes only or for a congressman seeking re-election in a safe Republican district where he would not likely face a primary challenger. Lastly, two agents of Rep. Messer – Greg Pence, who chairs the approximately 50-member Statewide Campaign Finance Committee, and Rep. Messer’s Deputy Campaign Finance Manager – have made statements explicitly referring to Rep. Messer as a candidate for election to the United States Senate. If an individual or someone acting on behalf of an individual makes or authorizes such statements, the statements would generally reflect the individual’s decision to become a candidate, thereby triggering candidacy and registration and reporting requirements.<sup>12</sup> The statements and actions of Rep. Messer, Rep. Messer’s campaign staffers, and chairman of his Statewide Campaign Finance Committee reflect that Rep. Messer has already decided to run for office. Mere assertions that the individual’s subjective intent differs from his or her statement or authorized statements made on his behalf “generally will not negate the objective indication of candidacy arising from the statement.”<sup>13</sup>

Rep. Messer is without a doubt a candidate for the United States Senate despite his insistence on ignoring the law. The law requires that no later than 15 days after becoming a candidate, a candidate for federal office must “designate in writing a political committee . . . to

<sup>11</sup> 11 C.F.R. §§ 100.72(b); 100.131(b)(3).

<sup>12</sup> Adv. Op. 2015-09 (Senate Majority PAC & House Majority PAC) at 6 (citing Factual and Legal Analysis at 4-8, MUR 5363 (Sharpton)).

<sup>13</sup> Adv. Op. 2015-09 (Senate Majority PAC & House Majority PAC) at 6.

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serve as the principal campaign committee of such candidate” by filing a Statement of Candidacy using the Commission’s Form 2.<sup>14</sup> Such a committee must file a statement of organization no later than 10 days after designation as the candidate’s authorized principal campaign committee.<sup>15</sup> The treasurer of a political committee must file reports of receipts and disbursements.<sup>16</sup> Although he has triggered candidacy status, Rep. Messer has failed to register and report as a candidate. He continues to skirt campaign finance laws, which encourages others to do the same.

### III. CONCLUSION

As we have shown, Respondent has violated the Federal Election Campaign Act. We respectfully request the Commission to investigate this likely violation, including whether it is knowing and willful. Should the Commission determine that Respondent violated the Act, we request that Respondent be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,



SUBSCRIBED AND SWORN to before me this 27 day of June, 2017.

  
Notary Public

My Commission Expires: 11-30-2021



<sup>14</sup> 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1.

<sup>15</sup> 52 U.S.C. § 30103.

<sup>16</sup> 52 U.S.C. § 30104.